

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Julia D'Alesandro, Audit Dept.

From: Brent Johnson, General Counsel

Re: Authority of Traffic Referees to Dismiss or Amend Cases

Date: March 20, 2006

This memorandum is in response to your e-mail dated January 26, 2006 asking whether traffic referees have authority to dismiss or amend charges, and requesting guidance on the procedures that should be followed when a case is dismissed or amended by a traffic referee. The answer to the first question is that a traffic referee does not have authority to dismiss or amend charges. I will also try to provide guidance on the second question.

Attached to this memorandum is a memorandum that I prepared for the Judicial Council on court referees. According to case law, an individual who is not a judge does not have authority to hear and determine controversies between litigants. A judge has authority to appoint a referee to assist the judge with certain legal issues, but basically the only authority that the referee has is to gather evidence and make recommendations to the judge. A judge must approve or disapprove of every action taken by a referee. Also, both the defense and prosecution must have notice of every proposed recommendation by a referee. Based on the case law and history of referees, the referee does not have independent authority to dismiss or amend charges.

There are two general ways that a court can approach the use of referees. The first is to provide specific guidance on the cases that can be compromised, and the manner in which they may be compromised. This method would essentially follow the model created by the Uniform Fine and Bail Schedule, and Rule 4-704, which provides clerks with the authority to notify defendants of bail and to dismiss cases when specific criteria are met. A judge could provide written guidance to referees which would state exactly what referees may do in certain cases. The referee would not be able to exercise any independent judgment, but would only be able to determine whether certain facts exist, and if the facts exist, apply the pre-approved compromise of the case. This information would also have to be provided to the prosecution, so that the prosecution is aware of the circumstances under which cases will be dismissed or compromised.

The second possible avenue for a court is to ensure that all referee actions constitute only a recommendation. A referee could receive evidence and facts, and make recommendations to the judge based on those facts. The recommendation would be provided to the prosecution and the defense, each of whom would have an opportunity to object. Each recommendation would then be reviewed by a judge and specifically approved or denied. This fits with the traditional model of referees.

Any cases that have already been resolved inappropriately can probably be left alone. These cases are probably saved under the de facto doctrine. As explained in Salt Lake City v. Ohms, when a case is resolved by a person without authority, but the defendant believes the person has authority, the actions are valid unless the defendant challenges the action within the appropriate time frame and the appropriate manner. For most of those cases, defendants will have lost any opportunity to challenge and they can be left alone.

If you have any questions about this matter, please let me know.